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09/853,802	05/11/2001	Jeffrey A. Ruschke	8266-0592	7034

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EXAMINER

LUBY, MATTHEW D

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/853,802

Applicant(s)

RUSCHKE ET AL

Examiner

Matt Luby

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 16 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8-40 is/are pending in the application.
- 4a) Of the above claim(s) 23-25, 27 and 28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 and 30-33 is/are allowed.
- 6) ☒ Claim(s) 8-10, 12-22, 26, 29 and 34-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10 & 12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims 23-25, 27 and 28 drawn to an invention nonelected with traverse in Paper No. 8. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims <sup>Group II</sup>16-18, 20, <sup>Group III</sup>22, 26 and 29, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Abstract 09024071, hereafter '071.

'071 disclose a propulsion device (1) having a coupler including a second, hook-shaped member (14, see Figure 4B) adapted to couple to a patient restraint board (see Figure 1 showing the second, hook-shaped member, 14, coupled to the upper part of the patient bed, e.g., the patient restraint board, and compare with where the second, hook-shaped member is located relative to the rest of the coupler in Figures 4A-C) and a first, hook-shaped member (15) adapted to couple to a base frame/bedframe (see

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Figure 1), a "vertically-extending" handle (11 is vertically extending inasmuch as it is extended at a vertical height above the floor, for example) coupled to the frame to permit rolling of the propulsion system (see Figures 4A-C, for example) and adapted to be coupled to the second member that is coupled to the patient restraint board (compare Figures 4A-C), a frame (10) and a motorized wheel/plurality of wheels (12a, 12b) coupled to the frame (see Figures 4A-C), wherein the coupler is adapted to couple to a top edge of the patient restraint board (see Figures 1 and 4A-C).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims <sup>Group I</sup> 8-10 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Abstract 09024071, hereafter '071.

Regarding claim 8, '071 discloses all of the claimed invention (see above 102(b) rejection for specifics) except for at least one of the first member and the second member being adjustable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make at least one of the first and second member adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art and in order to provide for adjustability to patient supports of varying heights. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

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6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Abstract 09024071, hereafter '071.

'071 discloses the claimed invention except for the handle extending from the propulsion device at a height above the patient restraint board (Figure 1 compared with Figures 4A-C show the handle extending at the same height as part of the patient restraint board). It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the handle at a height above the patient restraint board, since it has been held that rearranging parts of an invention involves only routine skill in the art and in order to accommodate varying height desires of various users. *In re Japikse*, 86 USPQ 70.

7. Claims <sup>Group IV</sup> ~~34-40~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Abstract 09024071, hereafter '071.

'071 discloses all of the claimed invention (see above 102(b) rejection for specifics) except for the separation between the first and second member being adjustable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the separation between the first and second member adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art and in order to provide for adjustability to patient supports of varying heights. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

***Allowable Subject Matter***

8. Claims 11 and 30-33 are allowed. The prior art fails to disclose a propulsion system including a vertically extending handle that is coupled to the frame and wherein a second member is slidably coupled to the vertically extending handle along with the rest of the recited limitations of claim 11.

***Response to Arguments***

9. Applicant's arguments filed 12/16/02 have been fully considered but they are not persuasive.

Regarding the IDS submitted on 12/3/01 by the Applicants, the Examiner has initialed off on US Patent No. 3, 770,070 and therefore this IDS had been properly considered. A copy is included in the mailing of this action.

Regarding the 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraph rejections, Applicants' amendments have overcome these rejections.

Regarding the rejection of claims 8 and it's dependent claims, Applicants presented no specific reason why the '071 Patent did not teach these claims. Accordingly, no specific response has been given to the general argument that the art does not teach the claim (which is what Applicants first paragraph on page 6 of their response basically states). Furthermore, the amendment to claim 8 required a new rejection under 103(a).

Regarding the rejection of claims 16-20, the rejection under 102(b) has been sufficiently clarified to address Applicants arguments in the 3<sup>rd</sup> full paragraph of their response.

Regarding the rejection of claims 21 and its dependent claims, the rejection under 102(b) has been sufficiently clarified to address Applicants arguments in the 3<sup>rd</sup> full paragraph of their response.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matt Luby whose telephone number is (703) 305-0441. The examiner can normally be reached on Monday-Friday, 9:30 a.m. to 6:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Matt Luby  
Examiner  
Art Unit 3611



M.L.  
March 7, 2003



Lesley D. Morris  
Primary Examiner

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